General Teamsters Local Union 326, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America *and* Greggo & Ferrara, Inc., and United Steelworkers of America, AFL–CIO. Case 4–CD–583

March 30, 1984

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN DOTSON AND MEMBERS ZIMMERMAN AND DENNIS

The charge in this Section 10(k) proceeding was filed 10 November 1982 by the Employer, alleging that the Respondent, Teamsters Local 326, violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees it represents rather than to employees represented by the Steelworkers. The hearing was held 14 April and 10, 11, and 12 May 1983 before Hearing Officer Carol F. Laskin.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

The Company, a Delaware corporation engaged in road and bridge construction, during the past year purchased goods and supplies valued in excess of $50,000 directly from points located outside the State of Delaware. The parties stipulate, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that Teamsters Local 326 and the Steelworkers are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. *Background and Facts of Dispute*

Since January 1981 the Employer has operated a landfill located in Wilmington, Delaware, near the Delaware Memorial Bridge. The Employer is also involved in various construction projects throughout the State of Delaware. Teamsters Local 326 represents the Employer's 75 truckdrivers and mechanics and the Steelworkers represents the 104 operators, finishers, laborers, and carpenters.

From January 1981 until April 1982 Teamsters-represented employees operated a dust-controlling water truck at the landfill pursuant to their contract with the Employer. In April 1982 the Employer replaced the 2000-gallon capacity water truck with a 10,000-gallon water wagon to improve efficiency.[1]

At the time of the water wagon's initial purchase the president of Steelworkers Local 15253 claimed the work fell within that union's jurisdiction, and he and the Employer agreed on an hourly wage rate.

In June 1982 Teamsters Local 326 filed a grievance claiming the work and seeking backpay. Approximately 2 months later Teamsters Local 326 President Michael Ciabattoni and Thomas Jones, a representative of the Steelworkers International, met and agreed that the water wagon came under the jurisdiction of the Teamsters rather than the Steelworkers.

Teamsters Local 326 threatened to engage in a work stoppage if the Employer did not assign the work to employees represented by it, and the parties stipulated that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated. Both Unions claim, however, that currently no jurisdictional dispute exists. The Employer contends that the Steelworkers' disclaimer is ineffective because individual members of the Steelworkers still claim the work. Charles McLean, the Steelworkers shop steward, and employee Jerry Grant testified at the hearing that they believe the work should be awarded to Steelworkers-represented employees. Both men also signed affidavits to that effect before the filing of the charge in this case.

B. *Work in Dispute*

The disputed work involves the operation of waterspreading dust control equipment at a landfill in Wilmington, Delaware.

C. *Contentions of the Parties*

The Teamsters contends that the work in dispute should be awarded to the employees it represents based on the Teamsters' contract with the Employer, which gives it jurisdiction over "Euclid-type or Similar Off-the-Highway Equipment (where not self-loaded)"; the collective-bargaining history of Teamsters Local 470, the Teamsters' predecessor union; the construction industry practice on the eastern seaboard, which shows that Euclid-type equipment comes under the Teamsters' jurisdiction; and the agreement between Teamsters Local 326 and the Steelworkers that the water wagon work belongs to Teamsters-represented employees.

[1] The water truck required operation up to 8 hours a day, while the water wagon does the same job when used four to six times a day for 15- to 20-minute periods.

The Employer contends that the disputed work belongs to employees the Steelworkers represents because the Steelworkers originally claimed the work and individual steelworkers still claim that the water wagon is "heavy equipment" and therefore covered by their contract with the Employer. The Employer further contends that the water wagon is not Euclid-type equipment, and that, unlike the water truck which the Teamsters formerly operated, the water wagon is not a modified truck, but a modified scraper and therefore under the Steelworkers' jurisdiction. In addition, the Employer argues that the water wagon functions differently from the water truck because it can perform the same work in one-eighth of the time. The Employer maintains that because the equipment is a modified scraper, the Steelworkers-represented employees' skill in operating it is superior to that of the employees represented by the Teamsters. The Employer states that the relevant industry practice should be limited to the construction industry in the State of Delaware, and that this jobsite is the first one where a water wagon has been utilized. In addition, Teamsters-represented employees are not normally assigned to the landfill, and therefore it is more efficient to have the work performed by Steelworkers-represented employees who are on the site 8 hours each day.

The Steelworkers asserts that the work in dispute belongs to employees represented by Teamsters Local 326 and that under the Steelworkers' constitution and bylaws the president of Local Union 15253 had no authority to enter into the agreement with the Employer providing that Steelworkers-represented employees would operate the water wagon.

D. *Applicability of the Statute*

Teamsters Local 326 threatened to engage in a work stoppage if the Employer did not assign the work to employees represented by it. We find reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred and that there exists no agreed method for voluntary adjustment of the dispute within the meaning of Section 10(k) of the Act. Accordingly, we find that the dispute is properly before the Board for determination.[2]

E. *Merits of the Dispute*

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of this dispute.

1. Collective-bargaining agreements

Pursuant to their respective collective-bargaining agreements with the Employer, employees represented by the Steelworkers operate heavy equipment, and employees represented by Teamsters Local 326 operate off-the-road vehicles. Teamsters Local 326 contends that the water wagon operation is within its jurisdiction under the terms of its contract with the Employer. Article 8, sections 2 and 3 of the Teamsters' contract provides that the Teamsters' work classification includes "Euclid-type or Similar Off-the-Highway Equipment," "Sprinkler Truck," and "Water Tank." Article 6 of the Teamsters' contract states that jurisdiction applies "generally to the operation of a truck for any purpose." The Teamsters asserts that the water wagon falls into the category of "Euclid-type or Similar Off-the-Highway Equipment [where not self-loaded]." In addition, the Teamsters claims that it resolved the issue by the agreement between it and the Steelworkers pursuant to article 18, section 1 of the Teamsters' contract, which provides for resolution of jurisdictional disputes.

The Employer contends that the water wagon operation is within the Steelworkers' jurisdiction by the terms of that Union's contract. The Employer argues that the Teamsters' contract governs strictly the operation of trucks while the Steelworkers' contract governs all other work except certain classifications not now in issue. The Employer's vice president, Nichols Ferrara Jr., testified that the Teamsters' agreement covers the operation of trucks alone. The Employer urges that the contractual provision regarding Euclid-type or similar off-the-highway equipment (where not self-loaded) is not to the contrary, because the term "Euclid" is a brand name that has become a common reference to a particular type of truck, and under the contract, sprinkler, water tank, and Euclid all refer strictly to trucks. The Employer argues that the water wagon, however, is not a truck because it was not modified from a truck as was the water truck. Rather, the water wagon was originally a scraper, an earthmoving piece of equipment, that is under the Steelworkers' jurisdiction. The Employer asserts that because the water wagon looks and handles like a scraper, both

[2] We agree with the Employer's contention that a dispute exists despite the agreement reached by the two Unions because conflicting claims still exist between Teamsters Local 326 and individual Steelworkers-represented employees. *NLRB v. Plasterers Local 79*, 404 U.S. 116 (1971).

Teamsters steward Charlie Williams and Steelworkers President Francis Hogate originally recognized the wagon as Steelworkers' equipment.

We find that the water wagon is a modified earthmoving piece of equipment, and therefore the factor of collective-bargaining agreement favors awarding the work to the employees represented by the Steelworkers.

2. Company preference and past practice

The Company, through Vice President Ferrara's testimony, expressed its preference that its Steelworkers-represented employees continue to perform the disputed work. While we do not afford controlling weight to this factor, we find it favors an award of the disputed work to the employees represented by the Steelworkers.

The Company's consistent practice since it purchased the water wagon has been to assign its operation to its Steelworkers-represented employees. While the Teamsters has shown its jurisdiction over the now-defunct water truck, it has shown no evidence of instances in which employees represented by it were assigned to operate the water wagon. We therefore find that the factor of employer past practice favors an award of the work in dispute to the Steelworkers-represented employees.

3. Area and industry practice

The Employer submits that no company or area practice exists regarding the operation of water wagons. The Teamsters contends that teamsters throughout the east have always operated dust control equipment.

Teamsters Local 326 contends that Teamsters Local 470, its predecessor union, operated a water wagon in Delaware in 1973 or 1974. A business agent for that union testified that he drove a water wagon in New Jersey under a Teamsters' contract. However, the Employer's witnesses testified that this is the first time this issue has arisen in Delaware, and that the only uncontradicted evidence of a water wagon being operated in Delaware is that James Julian Inc., a company located in Delaware, owns that type of equipment, and a Steelworkers-represented employee operates it. It is conceded that the Steelworkers is the only union representing James Julian Inc. employees. Accordingly, we find that the factor of area practice does not favor an assignment to the employees represented by either Union.

4. Relative skills

It is undisputed that Steelworkers-represented employees have performed this work since the Employer began using the water wagon in April 1982. Prior to this, dust was controlled at the landfill by use of water trucks, modified from over-the-highway dump trucks and operated by Teamsters-represented employees. These 8-foot wide by 20-foot long trucks have a 2000-gallon capacity. The water wagon was modified from a scraper, has a 10,000-gallon capacity, is over 12 feet wide by 50 feet long, and like a scraper, cannot be used on the highway without a special permit. The record reveals that the Employer's Steelworkers- represented employees are skilled in the operation of heavy machinery, a classification which includes the water wagon, and therefore could more easily be trained in the operation of the water wagon than employees who are not accustomed to handling heavy machinery.

The Teamsters asserts that employees it represents have traditionally operated dust control equipment. However, the equipment the Employer formerly used and the Teamsters operated is not comparable to the water wagon here in dispute. Based on the above, we find the factor of relative skills favors an award to the Employer's Steelworkers-represented employees.

5. Economy and efficiency of operations

The record shows that Steelworkers-represented employees are assigned to the landfill at all times when the water wagon is needed, and that they are qualified to perform the disputed work. A Steelworkers-represented employee can operate the water wagon for the required 15 to 20 minutes four to six times per day and return to his other duties at the landfill in the intervals.

The record also shows that Teamsters-represented employees are not normally on the jobsite and have no duties to perform there when the water wagon is not in operation. Therefore, if a Teamsters-represented employee were to operate the water wagon, he would be at the landfill being paid for a full day's work although his tasks would take a total of only 2 hours. The Employer contends that if teamsters were diverted from other work to go to the landfill and operate the water wagon both the driver and his truck would be out of service for over an hour to perform 15 minutes of work. The Teamsters has presented no evidence that employees it represents could perform the work more efficiently or economically. We therefore find that economy and efficiency of operations favor an award of the work in dispute to the Steelworkers-represented employees.

Conclusions

After considering all the relevant factors, we conclude that employees represented by Steelwork-

ers are entitled to perform the work in dispute. We reach this conclusion relying on collective-bargaining agreements, company preference and past practice, relative skills, and economy and efficiency of operations. In making this determination, we are awarding the work to employees represented by the Steelworkers, not to that Union or its members. The determination is limited to the controversy that gave rise to this proceeding.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

1. Employees of Greggo & Ferrara, Inc. represented by the Steelworkers are entitled to operate the water wagon at the landfill in Wilmington, Delaware.

2. Teamsters Local 326 is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force Greggo & Ferrara, Inc. to assign the disputed work to employees represented by it.

3. Within 10 days from this date, Teamsters Local 326 shall notify the Regional Director for Region 4 in writing whether it will refrain from forcing the Employer, by means proscribed by Section 8(b)(4)(D), to assign the disputed work in a manner inconsistent with this determination.